

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 2/26/2013	(3) CONTACT/PHONE Murry Wilson, Environmental Resource Specialist/(805) 788-2352	
(4) SUBJECT Hearing to consider an appeal by Jeff Edwards of the Planning Commission's approval of a Development Plan / Coastal Development Permit to allow for the increase in the daily maximum limit of crude oil throughput (by 10 percent) at the existing Phillips 66 oil refinery. District 4.			
(5) RECOMMENDED ACTION That the Board of Supervisors adopt and instruct the Chairperson to sign the resolution affirming the decision of the Planning Commission, certifying the Final Environmental Impact Report, and conditionally approving the Development Plan / Coastal Development Permit (DRC 2008-00146) application of Phillips 66 based on the findings listed in Exhibit A, the conditions listed in Exhibit B, and California Environmental Quality Act (CEQA) findings in Exhibit C.			
(6) FUNDING SOURCE(S) General Fund (No fee for Coastal Appeals)	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. _60 minutes_) <input type="checkbox"/> Board Business (Time Est. _____)			
(11) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP Attached	(15) BUSINESS IMPACT STATEMENT? Yes	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date _____	
(17) ADMINISTRATIVE OFFICE REVIEW Reviewed by Leslie Brown			
(18) SUPERVISOR DISTRICT(S) District 4 -			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Murry Wilson, Environmental Resource Specialist

VIA: Ellen Carroll, Environmental Coordinator

DATE: 2/26/2013

SUBJECT: Hearing to consider an appeal by Jeff Edwards of the Planning Commission's approval of a Development Plan / Coastal Development Permit to allow for the increase in the daily maximum limit of crude oil throughput (by 10 percent) at the existing Phillips 66 oil refinery. District 4.

RECOMMENDATION

That the Board of Supervisors adopt and instruct the Chairperson to sign the resolution affirming the decision of the Planning Commission, certifying the Final Environmental Impact Report, and conditionally approving the Development Plan / Coastal Development Permit (DRC 2008-00146) application of Phillips 66 based on the findings listed in Exhibit A, the conditions listed in Exhibit B, and California Environmental Quality Act (CEQA) findings in Exhibit C.

DISCUSSION

Background

The proposed project entails an increase to the permitted volume of processed crude oil over the existing permit level by 10 percent. The project will not result in new ground disturbance or physical expansion of the facility.

The Phillips 66 Santa Maria Facility (SMF) was built on the Arroyo Grande mesa in southern San Luis Obispo County in 1955. The facility is surrounded by industrial, recreational, agricultural, residential and open space land uses (see Attachment 5, Exhibit D – Land Use Category Map). The SMF operates 24 hours per day and 365 days per year, except when shut down for maintenance.

The SMF mainly processes heavy, high-sulfur crude oil. The bulk of crude oil processed at the SMF is delivered via pipeline from offshore platforms in the Outer Continental Shelf of Santa Barbara County and from oils fields in the Santa Maria area. In addition, crude oil from other onshore sources such as the Arroyo Grande (Price Canyon) field and San Ardo field is delivered by truck to the Santa Maria Pump Station (located in the City of Santa Maria) and then pumped into the dedicated pipeline to the SMF. Crude oil is received via pipeline only, processed at the SMF, and semi-refined liquid products from the SMF are sent by pipeline to the Rodeo Refinery (near San Francisco) for upgrading into finished petroleum products. Products leaving the SMF are: (1) semi-refined petroleum by pipeline; (2) solid petroleum coke by rail or haul truck; and (3) recovered sulfur by haul truck. In order for the semi-refined liquid product to arrive at the Rodeo Refinery, an additional pump station located near Santa Margarita is used to achieve the necessary flow to reach the end destination.

The San Luis Obispo Air Pollution Control District and the Department of Planning and Building agreed to be co-lead agencies for the purpose of environmental review (as a result of the dual permit requirements associated with the proposed project). The project included the preparation of an Environmental Impact Report which focused on impacts associated with an increase to the permitted volume of processed crude oil (10 percent increase over the existing permit level). Mitigation measures were adopted by the Planning Commission as conditions of approval after completion of a public hearing and deliberations on the proposed project. These measures address impacts associated with Air Quality, Public Safety and Hazardous Materials, Noise and Vibration, Transportation and Circulation, Public Services, Land Use Policies, and Water Resources. These measures reduced all potential impacts to a less than significant level.

The Planning Commission held a hearing on December 13, 2012 to discuss the proposed increase in throughput at the existing Phillips 66 refinery. The Planning Commission carefully reviewed the proposed project, project alternatives, and comments provided by the public. The Planning Commission approved the application by Phillips 66 which would increase the maximum allowable crude oil throughput (by 10 percent) from 44,500 barrels per day (bpd) to 48,950 bpd at the refinery (associated with the Development Plan / Coastal Development Permit).

An appeal of the Planning Commission's decision was filed on December 19, 2012 by Jeff Edwards. The basis of this appeal is related to Condition of Approval #17 which requires the applicant to prepare an offer of dedication for a vertical access easement consistent with the provisions of Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.420 prior to increasing crude oil throughput associated with the proposed project.

Coastal Access Discussion

The SMF is located adjacent to the California State Parks – Oceano Dunes State Vehicular Recreation Area (see Attachment 5, Exhibit D – Land Use Category Map and Aerial Photo). The State Parks' existing Coastal Development Permit 4-82-300 (and subsequent five amendments) includes conditions of approval that are applicable to the land and activities under their oversight. One of these conditions of approval (Special Condition 1.B.) requires an environmental impact analysis adequate to enable the selection of the least environmentally damaging location for a new permanent staging area and access to the park. Access to the park is currently taken from Grand Avenue (Grover Beach) and Pier Avenue (Oceano) and these are considered temporary access points.

An Alternative Access Study (Condor Environmental, 2006), prepared by State Parks, identified the Phillips 66 site as a potential alternative access location for the park. The area identified in the above referenced study is located in the approximate alignment that is the subject of this appeal (see Attachment 5, Exhibit D – Coastal Access Location Map 1 and 2).

Due to the coastal access requirements placed on the previous State Parks' permit as well as the recommended condition of approval associated with the proposed project (further discussion is provided below), there may be potential for the offer of dedication required by this action to align with potential permanent staging and access requirements associated with State Parks' Coastal Development Permit 4-82-300. However, since this permit application and the appeal before your Board are related to Phillips 66 and the requested crude oil throughput increase, the applicability of CZLUO Section 23.04.420 should be focused on the Phillips 66 request before your Board and not the State Parks' permit.

Appeal Discussion

The appeal is discussed in detail below and the text of Condition of Approval #17 (as approved adopted by the Planning Commission) has been provided for your Board's reference, as follows:

17. **Prior to issuance of the Notice to Proceed authorizing an increase in Refinery throughput,** the applicant shall comply with Section 23.04.420 – (Coastal Access Required). Construction of improvements associated with vertical public access (if required) shall occur within 10 years of the effective date of this permit (including any required Coastal Development Permit to authorize such construction) or at the time of any subsequent use permit approved at the project site, whichever occurs first. The approximate location of the vertical access required by this condition of approval shall be located within or immediately adjacent to the existing maintenance road as shown in Exhibit D – Project Graphic (Coastal Access Location Map 1 and 2).

General Appeal Issue – Condition of Approval #17 was overly broad and lacks the specificity to adequately implement Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.420 – (Coastal Access Required).

Staff Response: With regard to the general assertion presented by the appellant, Condition of Approval #17 was specifically crafted to address the timing of future improvements associated with the construction of vertical access (if required) and the level of development proposed by the applicant. The existing refinery has the ability to process the requested 10 percent increase in crude oil throughput and no physical upgrades are required to accommodate the request (air quality improvements will be required as mitigation associated with the proposed project). Since the project would not require any additional physical improvements to accomplish the throughput increase, Staff recommended that the Planning Commission establish a phased approach to the construction of improvements [as allowed by Section 23.04.420e.(2)].

The phased approach to meet the coastal access provisions of the CZLUO will allow for the applicant to review the potential alignment against the applicable siting criteria contained within the CZLUO; and allow for an analysis of the appropriate intensity of use, safety, the protection of sensitive resources, the appropriate level of improvements, and other criteria identified in Section 23.04.420k.

As provided by Section 23.04.420f. – (Permit Requirement) and as required by Condition of Approval #17, the coastal access requirements will be satisfied through either a Minor Use Permit or at the time of any subsequent use permit approved at the project site (within 10 years of the effective date of this permit), whichever occurs first. For these reasons, Staff believes that the provisions of Section 23.04.420 – (Coastal Access Required) have been adequately administered and the project is in compliance with the provisions of the CZLUO and the coastal access requirements. The condition of approval provides adequate specificity appropriate to the approved project.

The appellant brings forward three additional specific points of contention to be considered in conjunction with the above reference appeal issue. Staff has paraphrased the appellant's specific appeal issues contained in Attachment 1, as follows:

Appeal Issue 1: CZLUO Section 23.04.420d.(2) – (Vertical access dedication). The minimum width of 10-feet for the vertical access is inadequate. An offer of dedication can be reduced in width; however it cannot easily be enlarged in the future. Consequently, the appellant recommends a 100-foot wide offer of dedication as a condition of approval.

Staff Response: Staff does not agree with the appellant's assertion that the minimum width of 10-feet for the vertical access in rural areas is inadequate. If through the siting analysis (required by Section 23.04.420k.), it is determined that an offer of dedication larger than the minimum width is required to accommodate the design of appropriate improvements, then the applicant would be required to offer a larger area than previously offered in order to comply with the CZLUO as part of the subsequent Minor Use Permit or any subsequent use permit approval within 10 years.

An offer of dedication can be reduced in width or enlarged. Any changes to the proposed width of the offer of dedication would follow the same process whether it was to be enlarged or decreased in size. Additionally, if an alternative location on the project site was determined to be the superior location for vertical access (subject to the siting criteria requirements); the offer of dedication would need to be revised to reflect the revised location for access improvements.

Staff does not agree with the appellant's contention that it would be more difficult to enlarge the offer of dedication than to reduce its width therefore does not recommend a 100-foot wide offer of dedication as a condition of approval. Staff recommends that Condition of Approval #17 remain as approved by the Planning Commission. As approved, implementation of the condition of approval will result in the proposed project being in compliance with the CZLUO and the coastal access requirements of the Local Coastal Program (LCP).

Appeal Issue 2: **CZLUO Section 23.04.420e. – (Timing of access requirements).** The appellant contends that an offer of dedication, as suggested above, would fulfill the requirements for coastal access without any continued obligation to construct and/or maintain the public accessway. In this event, the appellant contends it makes the ten (10) year provision currently contained in Condition of Approval #17, moot. Moreover, by requiring only an offer of dedication, it creates greater certainty relative to the obligation of the applicant in the future. Requiring more than a dedication of land may exceed the thresholds contemplated for "rough proportionality" with regard to exaction and dedications under State law.

Staff Response: Staff does not agree with the appellant's assertion that simply providing an offer of dedication would result in the project being in compliance with the coastal access requirements contained in Section 23.04.420. When determining compliance with any provision of the CZLUO, the obligation to comply is placed on the applicant of the proposed project and not an adjacent property owner. Based on the physical location of the western property boundary (nearest to the shoreline) and its relationship to State Parks and their facilities (see Attachment 5, Exhibit D – Land Use Category Map); opportunities exist to coordinate efforts with regard to providing the appropriate level and intensity of access to the shoreline in this location. The coastal access obligation that has previously been placed on State Parks, as part of their coastal development permit and subsequent amendments, could theoretically be sited in the location identified as part of this application.

Since the obligation to comply with the CZLUO and the coastal access requirements of the LCP are the obligation of the applicant, and the applicant has agreed to the conditions of approval adopted by the Planning Commission; the issue raised by the appellant related to future uncertainty associated with construction of the accessway is not in question. The applicant has not appealed the decision of the Planning Commission and the applicant has agreed to Condition of Approval #17.

With regard to rough proportionality requirements, public agencies are prohibited from assessing a developer for more than the impacts caused by the proposed development. In this case, the County would be granting an entitlement to increase production and consequently the life of the facility (associated with the increased throughput and ongoing maintenance activities). The existing site conditions at the SMF limit vertical public access to the shoreline. Providing an offer of dedication per Condition of Approval #17 would allow the project to be in compliance with CZLUO Section 23.04.420 and will address the vertical public access issue in a phased approach.

A determination as to the level of improvements that would be required, the appropriate location of improvements, the intensity of use, etc. must still be made. This determination will be made pursuant to the specific language contained within Condition of Approval #17. For these reasons, Staff believes the obligation required by Condition of Approval #17 is appropriate. Compliance with this condition of approval will result in the proposed project being in compliance with the CZLUO and the coastal access requirements of the LCP.

Appeal Issue 3: **CZLUO Section 23.04.420k. – (Siting criteria for coastal accessway).**
Presently, Condition of Approval #17 requires the offer of dedication to follow an existing maintenance road of approximately 7,500 linear feet. The appellant agrees that the public accessway should be conterminous with the existing maintenance road to minimize potential environmental effects; therefore the site has been predetermined. With regard to the intensity of use, the 100-foot wide accessway likely would be sufficient to accommodate any number of uses including, but limited to, pedestrian, equestrian, bicycle, emergency and off-highway vehicle access to the adjacent State Vehicular Recreation Area. The extension to Willow Road and the associated improvements are complete. With the interchange at Highway 101, an important new circulation component serving the Nipomo Mesa is in place. The approximate distance between the refinery and the highway is 5 miles.

Staff Response: *As noted above in the appellant's appeal issues, the appellant believes that the public accessway should be conterminous with the existing maintenance road to minimize potential environmental effects. While this may be a valid conclusion related to providing access on the subject property, a full determination (considering all factors discussed in the siting criteria) has not been made at this time. Staff does not agree that the location of improvements has been predetermined by simply identifying a potential alignment that can be used for the purpose of recording the required offer of dedication. As noted in the December 13, 2012 Planning Commission staff report (see Attachment 5, Staff Report: page 2-4), a vertical access alignment located along the existing service road is "a likely location for vertical access" on the subject property. The analysis to determine the appropriate location, intensity of use, etc. remains to be determined, subject to the siting criteria found in Section 23.04.420k.*

While Staff agrees with the appellant's assertion that 100-foot wide offer of dedication would likely be sufficient to accommodate various potential users (pedestrian, equestrian, vehicles, etc.), Staff does not agree that it is appropriate to require a larger offer of dedication to accommodate undetermined users of the accessway before an analysis using the siting criteria found within Section 23.04.420k. is completed. Since the requirement for coastal access was applied as a condition of approval associated with the proposed project, the timing criteria proposed as a part of Condition of Approval #17 acknowledges the additional time that would be needed to comply with the provisions of Section 23.04.420. As discussed above, the CZLUO allows for the timing of the required improvements to be established by the review authority, which occurred with the Planning Commission's approval of the project.

With regard to the Willow Road circulation improvements, the Willow Road interchange is complete and serving the circulation needs of the Nipomo Mesa area. The distance from the Highway 101 / Willow Road interchange to the refinery entrance is approximately 5.5 miles. As written, adherence to the condition of approval will result in the proposed project being in compliance with the CZLUO and the coastal access requirements of the LCP.

Conclusion

Staff acknowledges the potential connectivity associated with access requirements contained in the Phillips 66 project before your Board (subject of this appeal) as well as the existing Special Condition 1.B. affecting the State Parks' land to the west of the project site. For the reasons discussed above in Staff's responses to the appeal issues, the project is in compliance with the requirements of CZLUO Section

23.04.420 and the coastal access requirements of the LCP. Condition of Approval #17 has been crafted in compliance with the provisions of Section 23.04.420, including subsection 23.04.420e.(2)-(Construction of improvements). For these reasons, Staff recommends that your Board uphold the decision of the Planning Commission conditionally approving Development Plan / Coastal Development Permit DRC2008-00146.

OTHER AGENCY INVOLVEMENT/IMPACT

The project was referred to and the EIR was circulated to: Public Works, Environmental Health, Air Pollution Control District, CAL FIRE, Caltrans, Department of Fish and Wildlife, Cal Trans, Santa Barbara County, City of Guadalupe, and the California Coastal Commission. County Counsel reviewed and approved the Resolution as to form and content.

BUSINESS IMPACT STATEMENT

Denying the appeal would allow the requested crude oil throughput increase at the Phillips 66 refinery as conditioned by the Planning Commission in its December 13, 2012 approval. As a result, Phillips 66 would be authorized to increase crude oil throughput by 10 percent above the existing permitted volume which would benefit the Specialized Manufacturing Business Cluster.

FINANCIAL CONSIDERATIONS

The required appeal fee was waived because the appeal listed "inadequate application of coastal access requirements" as the issue of appeal per the requirements of the Coastal Zone Land Use Ordinance. The cost of this appeal comes from the Department's General Fund support.

RESULTS

Affirming the decision of the Planning Commission and denial of the appeal as recommended by Staff would mean the application for Development Plan / Coastal Development Permit DRC2008-00146 would be conditionally approved as recommended by the Planning Commission on December 13, 2012. The proposed increase in crude oil throughput would be allowed to proceed. This action would be related to the County community-wide goals of safe and prosperous communities.

Upholding or partially upholding the appeal would mean either:

1. The application for Development Plan / Coastal Development Permit DRC2008-00146 would be denied based on findings proposed by the Board. The proposed increase in crude oil throughput would not be allowed to proceed and the Phillips 66 refinery would continue to operate at the existing permitted volume of throughput; or
2. The application for Development Plan / Coastal Development Permit DRC2008-00146 would be conditionally approved and subject to the findings and conditions as modified by your Board. The proposed increase in crude oil throughput would be allowed to proceed subject to the modifications directed by your Board.

ATTACHMENTS

Attachment 1 - Appeal form and appellant letter from Jeff Edwards
Attachment 2 - Board Resolution with Findings, Conditions of Approval, and CEQA Findings
Attachment 3 - Planning Commission Resolution with Findings, Conditions of Approval, and CEQA Findings
Attachment 4 - Planning Commission Minutes from December 13, 2012
Attachment 5 - Planning Commission Staff Report and Correspondence from the December 13, 2012 meeting
Attachment 6 - Final Environmental Impact Report (Clerk's File)